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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF OREGON

10 ANASTASIA STEVENS-WOODS,  
11 Plaintiff,  
12

Civil No. 07-1375-AA  
OPINION AND ORDER

13 vs.

14 MICHAEL J. ASTRUE,  
Commissioner of Social Security,  
15 Defendant.

16  
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27 AIKEN, Judge:

28 Claimant, Anastasia Stevens-Woods, brings this action

1 pursuant to the Social Security Act (the Act), 42 U.S.C. §§  
2 405(g) and 1383(c)(3), to obtain judicial review of a final  
3 decision of the Commissioner denying her application for  
4 disability insurance benefits under Title II of the Act and for  
5 Supplemental Security Income (SSI) disability benefits under  
6 Title XVI of the Act. For the reasons set forth below, the  
7 Commissioner's decision is reversed and remanded for payment of  
8 benefits.

#### 9 **PROCEDURAL BACKGROUND**

10 Plaintiff filed applications for disability insurance  
11 benefits and SSI disability benefits on July 13, 2005, alleging  
12 an onset date of October 1, 2001. Tr. 16, 66-74. Plaintiff  
13 alleged she was disabled due to temporomandibular joint (TMJ)  
14 dysfunction, carpal tunnel syndrome (CTS), a pinched nerve, mood  
15 disorder, depression, and anxiety. Tr. 87. Her claims were  
16 denied initially and upon reconsideration, and a request for a  
17 hearing was filed. Tr. 16, 28-37, 41-47. On September 20, 2006,  
18 a hearing was held. Tr. 16, 697-743. On October 24, 2006, the  
19 ALJ issued a decision denying plaintiff's applications. Tr. 16-  
20 23. On July 21, 2007, the Appeals Council denied plaintiff's  
21 request for review, tr. 507, making the ALJ's decision the final  
22 Agency decision. 20 C.F.R. §§ 404.981, 416.1481, 422.210.

#### 23 **STATEMENT OF THE FACTS**

24 Plaintiff is a 53-year-old woman. Her past relevant work  
25 was as a farm hand, packaging machine helper, gas station  
26 attendant, street sweeper, parking lot attendant, retail cashier  
27 and retail customer service provider. Tr. 736-37. Plaintiff is  
28 a high school graduate. Tr. 702-03. Plaintiff alleges that she

1 suffers from the severe impairments of lumbar degenerative disc  
2 disease, diabetes and left carpal tunnel syndrome. Tr. 18.  
3 Plaintiff further alleges that she suffers from morbid obesity,  
4 knee problems, hip problems and temporomandibular (TMJ)  
5 dysfunction. Tr. 18, 714, 716-17.

#### 6 STANDARD OF REVIEW

7 This court must affirm the Secretary's decision if it is  
8 based on proper legal standards and the findings are supported by  
9 substantial evidence in the record. Hammock v. Bowen, 879 F.2d  
10 498, 501 (9th Cir. 1989). Substantial evidence is "more than a  
11 mere scintilla. It means such relevant evidence as a reasonable  
12 mind might accept as adequate to support a conclusion."  
13 Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting  
14 Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)).  
15 The court must weigh "both the evidence that supports and  
16 detracts from the Secretary's conclusions." Martinez v. Heckler,  
17 807 F.2d 771, 772 (9th Cir. 1986).

18 The initial burden of proof rests upon the claimant to  
19 establish disability. Howard v. Heckler, 782 F.2d 1484, 1486  
20 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate  
21 an "inability to engage in any substantial gainful activity by  
22 reason of any medically determinable physical or mental  
23 impairment which can be expected . . . to last for a continuous  
24 period of not less than 12 months. . . ." 42 U.S.C.  
25 § 423(d)(1)(A).

26 The Secretary has established a five-step sequential  
27 process for determining whether a person is disabled. Bowen v.  
28 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1502,

1 416.920. First the Secretary determines whether a claimant is  
2 engaged in "substantial gainful activity." If so, the claimant  
3 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R.  
4 §§ 404.1520(b), 416.920(b).

5 In step two the Secretary determines whether the claimant  
6 has a "medically severe impairment or combination of  
7 impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R.  
8 §§ 404.1520(c), 416.920(c). If not, the claimant is not  
9 disabled.

10 In step three the Secretary determines whether the  
11 impairment meets or equals "one of a number of listed impairments  
12 that the Secretary acknowledges are so severe as to preclude  
13 substantial gainful activity." Id.; see 20 C.F.R.  
14 §§ 404.1520(d), 416.920(d). If so, the claimant is conclusively  
15 presumed disabled; if not, the Secretary proceeds to step four.  
16 Yuckert, 482 U.S. at 141.

17 In step four the Secretary determines whether the claimant  
18 can still perform "past relevant work." 20 C.F.R.  
19 §§ 404.1520(e), 416.920(e). If the claimant can work, she is not  
20 disabled. If she cannot perform past relevant work, the burden  
21 shifts to the Secretary. In step five, the Secretary must  
22 establish that the claimant can perform other work. Yuckert, 482  
23 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e) & (f), 416.920(e) &  
24 (f). If the Secretary meets this burden and proves that the  
25 claimant is able to perform other work which exists in the  
26 national economy, she is not disabled. 20 C.F.R. §§ 404.1566,  
27 416.966.

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## DISCUSSION

### 1. The ALJ's Findings

At step one, the ALJ found that plaintiff had not engaged in substantial gainful activity since the alleged onset date. Tr. 18, Finding 2. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). This finding is not in dispute.

At step two, the ALJ found that plaintiff had severe impairments of lumbar degenerative disc disease, diabetes and CTS of the left hand. Tr. 18, Finding 3. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). This finding is in dispute because plaintiff asserts that she had other impairments that were severe.

At step three, the ALJ found that plaintiff's impairments did not meet or equal the requirements of a listed impairment. Tr. 19, Finding 4. 20 C.F.R. §§ 404.1520(a)(4)(iii), 404.1520(d), 416.920(a)(4)(iii), 416.920(d). This finding is not in dispute.

The ALJ determined that plaintiff had the residual functional capacity (RFC) to lift and carry 20 pounds occasionally and 10 pounds frequently, sit, stand, and walk for up to 6 hours in an 8-hour work day, alternating between sitting and standing to relieve pain and discomfort; she could only occasionally climb and stoop, and she was precluded from constant use of her nondominant left upper extremity. Finally, she was restricted to only limited contact with her co-workers and to brief and structured interactions with the general public. Tr. 20, Finding 5. 20 C.F.R. §§ 404.1520(e), 404.1545, 416.920(e), 416.945. This finding is in dispute.

1 At step four, the ALJ found that plaintiff was able to  
2 perform her past relevant work as a parking lot attendant or a  
3 cashier, and therefore found her not disabled. Tr. 23,  
4 Finding 6. 20 C.F.R. §§ 404.1520(a)(4)(iv), 404.1520(f),  
5 416.920(a)(4)(iv), 416.920(f). This finding is in dispute.

6 2. Plaintiff's Allegations of Error

7 A. Plaintiff's Impairments

8 An impairment will be found severe if it "significantly  
9 limits [plaintiff's] physical or mental ability to do basic work  
10 activities." 20 C.F.R. §§ 404.1520(c), 416.920(c). See also,  
11 SSR 96-3p ("an impairment that is 'not severe' must be a slight  
12 abnormality (or combination of slight abnormalities) that has no  
13 more than a minimal effect on the ability to do basic work  
14 activities"). Examples of basic work activities include physical  
15 functions such as walking, standing, sitting, lifting, pushing,  
16 pulling, reaching, carrying, or handling; capacities for seeing,  
17 hearing, and speaking; understanding, carrying out, and  
18 remembering simple instructions, use of judgment; responding  
19 appropriately to supervision, co-workers and usual work  
20 situations; and dealing with changes in a routine work setting.  
21 20 C.F.R. §§ 404.1521(b)(1)-(6), 416.921(b)(1)-(6).

22 The burden is on plaintiff to establish a severe impairment  
23 by providing medical evidence showing she has an impairment and  
24 how severe it is during the time she says she is disabled. See  
25 Edlund v. Massanari, 253 F.3d 1152, 1159-60 (9<sup>th</sup> Cir. 2001).

26 Plaintiff argues that the ALJ erred by finding that  
27 plaintiff's obesity, knee problems, depression and gender  
28 identity disorder were not severe. I agree and find that the

1 record supports plaintiff's assertion that her depression has a  
2 significant impact on her ability to perform work duties.  
3 Plaintiff's treating providers have consistently and overwhelming  
4 diagnosed plaintiff with a serious depressive disorder including  
5 persistent suicidal ideation. In January 2003, Dr. Becker  
6 diagnosed plaintiff with "depression," and made a change to her  
7 anti-depression medications. Tr. 174. In August 2003, Dr.  
8 Becker saw plaintiff again, maintained the diagnosis of  
9 "depression," and stated [plaintiff] should be off work at least  
10 three more months." Tr. 168. In December 2003, Dr. Becker  
11 noted, after seeing plaintiff, that her "depression [is] under  
12 poor control," and made yet another change to her anti-depression  
13 medications. Tr. 165.

14 Beginning August 2000, plaintiff has been treated by her  
15 mental health therapist, Bryan Neff, L.C.S.W. In July 2004,  
16 Mr. Neff diagnosed plaintiff with "multiple factors impacting  
17 depression, [and] increased anxiety. Tr. 222. In April 2005,  
18 plaintiff was seen by Dr. Ganzini, a psychiatrist at the Veterans  
19 Administration Medical Center (VAMC). Tr. 282. Dr. Ganzini  
20 noted plaintiff was being followed for treatment of depression  
21 and anxiety. Id. Plaintiff's medications were changed. Id.  
22 Plaintiff was subsequently seen again by Dr. Ganzini who assessed  
23 plaintiff with a "major depressive disorder" and again changed  
24 her medications. Tr. 318. Bryan Neff then saw plaintiff and  
25 concluded "vet clearly impaired in terms of resuming any  
26 meaningful work . . . stressed importance of calling this  
27 writer if parasuicidal urges return." Tr. 283. Bryan Neff  
28 subsequently saw plaintiff for "worsened depression," and gave

1 plaintiff a GAF of 46. On August 19, 2005, plaintiff was seen by  
2 Dr. Ward, a clinical psychologist, who administered a  
3 comprehensive battery of mental health tests to plaintiff. Dr.  
4 Ward concluded that plaintiff is experiencing "significant  
5 distress and depression. . . . The veteran endorsed items  
6 suggesting that she currently experiences suicidal ideation . .  
7 . . Her potential for self-harm should be monitored on an ongoing  
8 basis." Tr. 439. Dr. Ward gave plaintiff a GAF score of 45.

9 On September 28, 2005, plaintiff was evaluated by Dr. Julie  
10 Nelligan, a clinical psychologist, who assessed plaintiff with a  
11 major depressive disorder, finding that she "has minimal social  
12 support and appears to be having difficulty coping with current  
13 stressors." Tr. 513. Further, the record is replete with  
14 evidence that plaintiff experienced suicidal ideation during the  
15 relevant time period. Tr. 322, 439. Contrary to the ALJ's  
16 finding that "plaintiff's depression was in remission and her  
17 symptoms were well-controlled with medication," the record  
18 reflects that plaintiff's depression is ongoing. Finally, the  
19 court notes SSR 06-03p, which provides that opinions from medical  
20 sources, such as Mr. Neff's, "are important and should be  
21 evaluated on key issues such as impairment severity and  
22 functional effects." I find that Mr. Neff's opinions and  
23 findings, along with those of plaintiff's treating doctors, are  
24 probative evidence of the significant impact of plaintiff's  
25 impairments on her ability to work.

26 B. Ability to Return to Past Relevant Work

27 Plaintiff argues that at step four of the disability  
28 analysis, the ALJ erred in failing to incorporate all of



1 plaintiff's limitations into his residual functional capacity  
2 determination. The defendant responds that the ALJ is "not  
3 required to include opinion evidence that has been properly  
4 discounted." Def's memo, p. 12. However, as discussed above,  
5 the ALJ improperly discounted medical evidence and testimony in  
6 the record supporting the severity of plaintiff's depression and  
7 suicidal ideation. Even Dr. Rethinger's opinion, relied on by  
8 the ALJ as a non-examining doctor, found that plaintiff has  
9 depression as a medically determinable impairment. Tr. 398.  
10 Because the ALJ failed to include any limitations with regard to  
11 plaintiff's depression (ability to sustain concentration and  
12 persistence, understanding and memory), the hypothetical posed to  
13 the vocational expert does not reflect all of plaintiff's  
14 limitations and therefore has no evidentiary value. Embrey v.  
15 Bowen, 849 F.2d 418, 423 (9<sup>th</sup> Cir. 1988).

#### 16 CONCLUSION

17 The Commissioner's decision is not based on substantial  
18 evidence. Therefore, this case is reversed and remanded for  
19 payment of benefits. This case is dismissed.

20 IT IS SO ORDERED.

21 Dated this 10 day of November 2008.

22  
23  
24  
25 /s/ Ann Aiken

26 Ann Aiken  
27 United States District Judge  
28